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No. 89-1981

In The

Supreme Court of the United States

October Term, 1990

HOWARD E. WILLIAMS,

Petitioner,

v.

CITY OF NORTHPORT,

Respondent.

On Petition For a Writ of Certiorari To The Supreme Court of Alabama

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether this Court should consider a petition attacking a state statutory scheme as unconstitutional when no constitutional claims were made and no federal question was decided in the state court below.

II. Whether the Alabama worker's compensation statutes are violative of any constitutional guarantees because there is no right to a jury trial.

LIST OF PARTIES

Petitioner is Howard E. Williams, an individual.

Respondent is City of Northport, Alabama, a municipal corporation.

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STATEMENT OF THE CASE

For its statement of facts material to consideration of the questions presented in the petition and the brief in opposition, respondent, City of Northport, adopts the statement of facts set forth in the opinion of the Alabama Court of Civil Appeals attached to the petition as Appendix B. In addition, the City of Northport makes the following statement of facts which have occurred since the Alabama Court of Civil Appeals issued its opinion.

At no point in the proceedings of the state court below, at either the trial or appellate level, did the petitioner claim that the state workers' compensation statutory scheme violate the guarantees of the United States Constitution. No Alabama Court decided a federal question. Petitioner first claimed a violation of constitutional guarantees in a "petition for rehearing" filed with the clerk of the Alabama Supreme Court. There is no provision for "petitions for rehearing" after a petition for writ of certiorari is denied in the Alabama Rules of Appellate Procedure. The Alabama Supreme Court ordered that the "petition for rehearing" be stricken before the respondent so moved. Both the Alabama Court of Civil Appeals and the Alabama Supreme Court had already ruled on petitioner's appeal and petition for writ of certiorari, neither of which presented a federal question. Petitioner then filed a notice of appeal to this Court claiming infringement of his constitutional guarantees.

REASONS FOR DENYING WRIT

I. This Court should not consider the claims of the petitioner on jurisdictional and procedural grounds. Sup. Ct. R. 10.1 provides in pertinent part:

> A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons that will be considered:
>
> * * *
>
> (b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.
>
> (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

None of the state courts below decided a federal question. No decisions of the Alabama appellate courts in this case conflict with a decision of this Court, a federal court of appeals or the Alabama Supreme Court. Therefore, no reason to grant the petition for writ of certiorari exists.

There is another equally sound reason to deny the petition. Petitioner's first claims of constitutional infringement were made in a "petition for rehearing" filed with the Alabama Supreme Court subsequent to the hearing before a trial judge, the Alabama Court of Civil Appeals' opinion and the denial of a petition for writ of

certiorari by the Alabama Supreme Court. There is no such thing as a "petition for rehearing" after review on writ of certiorari has been denied in Alabama; therefore, no federal question was decided and no constitutional claim was made. Petitioner's assertion that his guarantees of due process and equal protection had been violated were not made in the state court and came after the fact when made in the notice of appeal to this Court. Claims of constitutional infringement not made in the proceedings below are not due to be considered by this Court. *Young v. Masci*, 289 U.S. 253, 77 L.Ed. 1158, 53 S.Ct. 599 (1933).

II. Petitioner claims that the Alabama workers' compensation statutes are violative of his rights under the United States Constitution; that he has been denied due process and equal protection of the laws; and, that he has unconstitutionally been denied a right to a jury trial. None of petitioner's arguments have merit. This Court has upheld workers' compensation statutes similar to Alabama's against attacks on constitutional grounds many times before.

The constitutional right to a jury trial in civil cases is contained in the Seventh Amendment of the United States Constitution. Petitioner claims he is entitled to a jury trial on his motion for relief from judgment based on his alleged mental competence, but he does not base his argument on the Seventh Amendment. In *Mountain Timber v. State of Washington*, 243 U.S. 219, 61 L.Ed. 685, 37 S.Ct. 260 (1917), this Court upheld a similar workers' compensation statutory scheme against attack on constitutional grounds. This Court also held that the Seventh Amendment has no application to proceedings in state

courts. *Id.* at 235. Petitioner's constitutional rights were therefore not violated when his motion was heard by a judge rather than a jury.

This Court has also upheld state workers' compensation statutes against complaints that those statutes violated due process and equal protection principles. In *New York Central Railroad Co. v. White*, 243 U.S. 188, 61 L.Ed. 667, 37 S.Ct. 247 (1917), it was held that a statutory scheme which deprived employees of a jury trial and of higher damages which might otherwise be recovered at common law did not violate due process, and that state legislatures were free to modify common law rules regarding the rights and liabilities of employers and employees.

Petitioner also alleges that the Alabama workers' compensation laws infringe upon his constitutional freedom of contract. However, this Court has held that such laws do not measurably limit the freedom of employer and employee to agree with respect to terms of employment, and that workers' compensation statutes are a constitutionally acceptable exercise of the police power of the state. *New York Central Railroad Co. v. White* at 209.

Petitioner claims that because a judge rather than a jury decided the issue of his mental competence, his rights to due process were violated. In *Hawkins v. Bleakly*, 243 U.S. 210, 61 L.Ed. 678, 37 S.Ct. 255 (1917), this court held that a state workers' compensation statute which invested factfinding responsibilities in an administrative body was not objectionable on due process grounds. There is simply no merit to petitioner's argument that the

Constitution guarantees him a jury trial in a workers' compensation case.

This Court upheld a Texas workers' compensation act in the face of due process and equal protection attacks in *Middleton v. Texas Power & Light Co.*, 249 U.S. 152, 63 L.Ed. 527, 39 S.Ct. 227 (1919). In *Middleton*, this Court held that there was no arbitrary and unreasonable classification of employees because some Texas workers were included in the statutory scheme while others, such as domestics and railroad employees, were excluded.

In Alabama, there is no classification of employees with respect to the right to a jury trial in a workers' compensation case. No employee has a right to a jury trial. There is no classification of employees within the statutory scheme so there can be no denial of equal protection.

Supreme Court Rule 15 compels respondent to cite any misstatements contained in the petition. Accordingly, this Court should know that none of the state decisions or statutes on which the petition is based are in conflict with the United States Constitution or decisions of this Court. None of the Alabama appellate decisions in the proceedings below decided constitutional claims or federal questions. The cases of this Court cited by petitioner did not review state workers' compensation statutes or similar enactments.

The petitioner had a hearing at which he presented his case and had its merits fairly judged when he entered into a workers' compensation settlement agreement. On the motion for relief from judgment, the trial court heard

evidence concerning the issue of petitioner's mental competence, and again petitioner presented his case and had its merits fairly judged. According to recent decisions of this Court, the rights granted the petitioner by the Due Process Clause were not violated. *Logan v. Zimmerman Brush Company,* 455 U.S. 422, 71 L.Ed.2d 265, 102 S.Ct. 1148 (1982).

"A review on writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R. 10.1. On the merits, there is nothing in the United States Constitution or any decision of this Court which would grant petitioner a jury trial in a state workers' compensation case. Petitioner has failed to state any reason or legal basis upon which this Court could grant writ of certiorari because none exists.

CONCLUSION

The petition should be denied because no federal question was decided and no constitutional claims were made in the proceedings below. But even if the state court had based its decision on constitutional issues, the question presented is not substantive and does not rise to the level required for the consideration of this Court. More importantly, Petitioner has suffered no infringement of constitutional rights. The Alabama Court of Civil Appeals correctly decided that petitioner was not entitled to have set aside a judgment entered pursuant to a workers' compensation settlement agreement which petitioner freely and competently made. The decision was based solely on state law concerning expert testimony in such cases.

Accordingly, respondent, City of Northport, respectfully requests that the petition for writ of certiorari be denied.

Respectfully submitted,

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